

Insurance Plan and Market Organization Subcommittee Meeting  
July 19, 2011  
Ramkota Hotel, Pierre, SD

**Present:** Randy Johnson, Scott Jones, Jill Kruger, Larry Kucker, Eric Matt, Randy Moses, Amy Olson-Miller, Kim Perry, Sarah Perry, Sue Schaefer, Frank Stork, Lynne Valenti, Sandy Zinter, Lisa Carlson, Senator Hundstad, Jeff Miller, Bryant Hudson.

The minutes from the July 8 meeting were unanimously approved.

**Agent Appointment Alternatives**

Per a discussion Randy Moses had with Darla Pollman Rogers, NAIFA (National Association of Insurance and Financial Advisors) preferred option 2, which is agents are appointed with insurers and earn no commissions for selling plans when the agent is not appointed.

Frank Stork was a proponent of option 2, as was Lisa Carlson.

Jill Kruger wondered if there was any reason for differences in appointment rules between individual and SHOP exchanges. Randy Moses provided that it was conceivable to have different rules for different markets.

Option 3, allowing a limited appointment and no contractual relationship to sell insurance through a carrier was discussed. Members of the group were concerned since there would be no contractual agreement between the agent and the carrier, there would be no guarantee that agents selling policies were trained properly and carriers would be assuming additional liability.

Jill Kruger explained that in Utah there are exchange education requirements.

Lisa Carlson stated from a practical standpoint, an agent may not be able to be well versed in plans if they are selling for many carriers, as each carrier sells a variety of plans.

Randy Moses added that there will be navigators assisting consumers and helping them enroll. Frank Stork provided that agents can serve as navigators under current rules, they just cannot be compensated by insurers. Lisa Carlson explained her view of what a navigator's role would be—a navigator would be someone that would walk callers through a decision tree then provide a number of choices generated by the exchange tool. After speaking with the navigator, the customer could then purchase insurance online or be given a choice of agents. The role of agents is to sell and service the contract, while the role of the navigators is pre-enrollment or presenting options. Sandy Zinter explained that navigators will have to explain basic insurance terminology to many people. Many individuals that will shop on the exchange will be first time insurance purchasers.

In response to an inquiry from Senator Hundstad, Frank Stork explained that companies have to offer silver and gold plans to participate on the exchange. These are based on the actuarial value of a plan.

The group moved to delete options 1 and 4 relating to agent appointment from consideration. Those options were to require all insurance agents to be appointed by all carriers to sell on the exchange, and to remove the requirement of appointment entirely. This decision was unanimously approved and the options were removed from consideration.

Lisa Carlson thought it may violate HIPAA if there was no contractual agreement between the agent and insurer. Randy indicated he would provide information on the HIPAA concern for the next meeting.

Amy Olson-Miller was concerned if the agent is not appointed with a carrier they cannot provide service to an individual or employee that chooses a different carrier. She added that maybe a different kind of contract should be considered, understanding carriers do not want to appoint everyone.

Lisa Carlson believed an appointment was important because in order to be appointed, the agent must have product knowledge, education, and be committed to meet a certain quality standard, among other requirements.

### **Wrapping**

A definition of wrapping was provided. Wrapping is the practice of employer plans, either through purchasing coverage or providing through the reimbursement of employer funds, providing for enrollee reimbursement of amounts which are under the deductible of the primary employer sponsored plan.

Larry Kucker believed wrapping is a business practice and the Division of Insurance or exchange is not going to get employers to reveal they are engaging in the practice. He understood the insurance companies concern, but believed it was outside the scope of an exchange document. He believed rate-ups based on companies using wrapping may be acceptable, but reiterated that it is hard to uniformly find out about the practice.

Frank Stork explained wrapping divorces utilization and projected costs/ behaviors. If utilization is divorced from actual costs, those costs are not built into the system and all have to pay for the additional costs because someone is not being assessed for their utilization.

Eric Matt and Jill Kruger explained when a company wraps, an employer is paying the deductible. The company is only paying for a high cost plan, but the employee behaves as though they have a lower deductible and they use more care.

Jill Kruger cited information send by Deb Muller from a Milliman study which indicated wrapping causes a 2%-15% cost of benefits that must be passed on to others.

Randy Moses agreed to rework the adverse selection recommendation related to wrapping, which may include a definition.

### **Small group and individual health insurance markets**

The group reviewed a new recommendation that read as follows:

*The formation of an exchange should not result in the merging of the individual and small group health insurance markets.*

Lisa Carlson and Frank Stork support the recommendation to keep the individual and small group insurance markets separate. Lisa stated the assumption that the high risk pool would go

away and that insurance products could be purchased more cheaply with guaranteed issue resulting in a migration onto the individual market. She believed the two should be split in order not to jeopardize the actuarial health of the small group pool until its integrity can be better evaluated.

Jeff Miller believed this recommendation made even more sense on the dental side. In dental, some can come in and purchase insurance then have their expensive surgery and get off the plan.

The group thought the recommendation should be re-worded in order not to confuse it with the idea that there should be one exchange where all plans are sold.

### **Employer participation and/or contribution requirements**

Randy Moses stated that participation requirements were permitted, but not required per the federal regulations. State statute allows participation requirements as long as carriers are consistent among employers and employees are counted appropriately.

Lisa Carlson stated that she would like Bernie Moran from the Department of Labor and Regulation to provide drill down data on contribution levels and participation requirements. She also requested information on waiting periods. PPACA sets a waiting period limit at 90 days.

Randy Moses indicated the best way to determine participation requirements was to survey carriers. He believed a participation rate of 75% was typical. The Division of Insurance will gather this information.

The concern of self-funding and over low attachment points for reinsurance was explained. A group will self-fund and buy stop loss insurance with a low attachment point, for example \$5,000 or \$10,000. When this practice occurs, the attachment point is virtually no different than the company purchasing a plan with a deductible of \$5,000 or \$10,000

Lisa Carlson stated that the number of small employers self-funding, according to the Department of Labor and Regulation data, is troubling. When the group experiences a year with many bad risks, they will move to the exchange, and when the group is healthy they will go back to self-insuring with a low attachment point stop loss coverage.

Randy Moses provided background on the subject. The Division of Insurance tried to put rules in place to put limits on employers self-funding and buying low attachment point stop loss coverage. The rules were not approved. Legislation could be passed to prevent self-funding with low attachment point stop loss coverage self-funded insurance in the first place.

Lisa Carlson wanted to know if additional breakdown of the Department of Labor and Regulation information of the self-insured groups could be obtained.

Sen. Hundstad stated that there will be opportunities to make adjustments to the exchange after 2014 and did not expect that it would necessarily be perfect out of the box.

### **Training requirements to sell on the exchange**

Randy Moses and Jill Kruger asked the group if there should be specific training or requirements for an agent to participate in the exchange. Lynne Valenti believed there should

be a baseline level. Jill Kruger believed agents selling on the exchange needed more knowledge for those moving back and forth between the exchange and Medicaid. Lynne Valenti stated that it would be important for agents to understand how the premium subsidies work.

Lisa Carlson believed if the state is making the tool it should probably be part of a continuing education requirement. This would be easier than carriers keeping up to date with what the state is doing when it makes changes to the system

Randy Moses stated that he would get the idea of having a CE hour dedicated to exchange training to NAIFA and Darla Pollman Rogers for their opinion.

### **Marketing standards for agents and carriers within the exchange**

Randy Moses believed the group may have to look past 2014 to see how to deal with marketing concerns as issues emerge. The State of South Dakota has certain standards in place regarding misrepresentation, and we may not need anything specific for exchanges.

Frank Stork stated that he believed there was something in the HHS regulations about marketing efforts aimed at discouraging high risk individuals from enrolling.

The group agreed that no new marketing requirements should be considered for exchanges at this time and a recommendation will be drafted to that effect by the Division of Insurance.

### **Should defined benefit model be allowed in the exchange?**

Frank Stork supported the idea of allowing employers to continue with a defined benefit option in the exchange. Lisa Carlson supports defined benefit as well as defined contribution in the exchange because it creates a larger risk pool. Some employers will be hesitant to move away from employer choice offered plans.

A new recommendation will be drafted by the Division of Insurance involving inclusion of employer choice plans in the exchange due to the broad consensus observed within the group.

### **Network Adequacy**

Randy Moses stated the federal regulations released last week gave the states latitude in regards to network adequacy. Today, when approving a plan for sale in a certain geographical area, the division looks at where the network hospitals are and where residents are going for care. Currently the standards are not overly specific, the regulations and statutes are quite broad. A recommendation will be drafted to keep the exchange network adequacy requirements the same as they are now in SD.

It was noted that all group objectives had been discussed. The group will continue the discussion and additional recommendations finalized.

A conference call will be held from 3 PM-5 PM on August 1<sup>st</sup>.

Senator Hundstad recommended that the group include brief explanatory paragraphs along with the recommendations. This would show intent even if others do not agree with the wording of

the recommendations. The Division of Insurance will put together one document with objectives, current recommendations, and recommendation narratives at Senator Hundstad's request.

Meeting adjourned 3:40 PM